

**COMMISSION MEETING  
THURSDAY, JUNE 15, 2006  
MINUTES**

**Chair Ludwig** called the meeting to order at 1:30 p.m. at the Marcus Whitman Hotel and Convention Center located in Walla Walla. He introduced the following members and staff present:

**MEMBERS PRESENT:**           **COMMISSIONER CURTIS LUDWIG**, Chair, Kennewick  
   **COMMISSIONER ALAN PARKER**, Vice Chair, Olympia  
   **COMMISSIONER JOHN ELLIS**, Seattle  
   **COMMISSIONER PEGGY ANN BIERBAUM**, Quilcene  
   **SENATOR MARGARITA PRENTICE**, Renton  
   **SENATOR JEROME DELVIN**, Richland  
   **REPRESENTATIVE ALEX WOOD**, Spokane

**STAFF PRESENT:**           **RICK DAY**, Director  
   **GARY DRUMHELLER**, Acting Ast. Director-Field Ops.  
   **DAVID TRUJILLO**, Assistant Director-Licensing  
   **AMY HUNTER**, Administrator- Communications and Legal  
   **JERRY ACKERMAN**, Assistant Attorney General  
   **SHIRLEY CORBETT**, Executive Assistant

**Director Day** noted this is Commissioner Ludwig's final meeting with the Commission, as his term expires on June 30. Commissioner Ludwig has been with the Commission since January of 1996. He presented Chair Ludwig with a service certificate and read into the record a letter from Governor Gregoire:

"I am delighted to join with your friends and colleagues in thanking you for you the exceptional leadership you have provided to the Washington State Gambling Commission over the past ten years. Please accept my warmest congratulations on completing your term as Chair and my best wishes as you celebrate your retirement. Since Governor Mike Lowry first appointed you to the Gambling Commission in 1996, you have served as Commissioner, Vice Chair, and Chair. In each of these positions, you played a pivotal role in furthering the Commission's goal to "protect the public by ensuring that gambling is legal and honest." I have no doubt that your wise counsel and depth of experience will be greatly missed. Your length of service with the Commission speaks volumes about your strong dedication to the people of

Washington. But this level of commitment comes as no surprise to those who also recall your services as a state senator, a prosecuting attorney for Benton County, and a hearings officer for the state Personnel Appeals Board. Thank you for all that you have done to make our state an even better place to live, work, and raise a family. Again, congratulations on a job well done and best wishes for a well deserved retirement.”

**Director Day** advised that he thought it was appropriate to open the meeting with this letter from Governor Gregoire to acknowledge Commissioner Ludwig’s service and, and he agreed it has been an honor to work together.

**Staff Recognition:** **Director Day** then presented a 5-year service award to Special Agent Mark Richart.

**Chair Ludwig** commented that the first item on the agenda is the Director’s Report; however, he promised Mr. Jerow who has an item on Friday’s agenda that for his convenience and scheduling, the Commission would try to take the issue today.

## **1. Review of Agenda:**

**Director Day** addressed the agenda for Thursday and Friday and he highlighted inserts added to the agenda packet since publication. He advised that staff has no recommended agenda changes and he acknowledged Chair Ludwig’s proposal to move item 15, the ZDI petition from Friday to today’s agenda. Director Day suggested that Mr. Jerow may be interested in the ZDI Gaming Initial Declaratory Order, which was provided in the agenda packet for informational purposes only; however, he didn’t anticipate any further discussion on that item. Director Day proceeded to cover the following reports:

### **Legislative Hearing:**

Commission staff appeared at a Legislative Hearing on May 24 with the Lottery Commission and the Horse Racing Commission. The three agencies provided a combined presentation to the Joint Committee on Gambling Policy which was designed as an alternate to a study group that was proposed last session. The initial session of this group was to acquaint the members with a wide variety of gambling issues and information. Subsequent meeting will be called at the request of the Legislators as they select the topics they want to work on in the interim between now and the upcoming session. The three agency PowerPoint presentation provided at the hearing clearly identified the differences between the Horse Racing Commission, the Gambling Commission, and the Lottery Commission. Several priority issues were identified by each agency for the upcoming legislative session. The Gambling Commission priorities included rules simplification, Internet gambling, some clean up regarding the temporary authority to operate and suspensions, and the concept of barring criminals from licensed premises.

**Employee Survey:** **Director Day** noted the Commission self-elected to participate in very lengthy employee surveys every two years. This year, the Governor launched an initiative to turn the employee survey concept statewide across all state agencies. The survey

questions were reduced from 50 to 12 questions, and a few of the questions were similar to what the Commission previously asked. **Director Day** thought the commissioners might be interested to see what the survey questions revealed and how the Commission's totals compared to the agencies around the state. He advised that the Commission continues to exceed all of the state averages and he noted there were some significant findings. One of the questions had to do with how staff is treated by their supervisor—93 percent of the agency staff responded that staff either experienced dignity and respect all the time, or usually. In addition, 88 percent of the staff responded that they did know what they were expected to do. Director Day acknowledged a slight drop in some of the comparable questions from the past surveys, which he affirmed reveals that leadership needs to keep working.

2007 Agency Request Legislation: **Director Day** reviewed the preparation process noting that staff typically introduces legislative concepts they think has merit for Commission consideration. Commissioners are asked to provide direction for further staff development, and the refined proposals are ultimately presented in August for Commission decisions on whether or not to move the concept through the Governor's Office as proposed legislation.

**Amy Hunter**, Administrator, Communications and Legal Division advised that staff is proposing three items for possible agency request legislation. The first one is a change to the part of RCW 9.46.070 that lists the Commission's powers and duties. At the last Commission meeting, commissioners were asked to begin signing orders of summary suspensions. During the rules simplification project staff found out that the Director has statutory authority to issue summary suspensions against most operators, charitable organizations, and commercial operator; but, he does not have that authority when dealing with individual card room employees. Staff believes the RCW was written that way because in 1973 there weren't that many license holders. Fixing that part of the RCW would be a benefit to the Commission especially during times when there aren't Commission meetings every month. Additionally, if someone has been involved with cheating, bookmaking, or something else very serious, the Director may issue the order prohibiting them from operating as quickly as possible. Another proposed change to this RCW would be to allow the Director to issue temporary licenses to individual holders. Staff would have ample time to conduct the initial background checks and get people working as quickly as possible. The last proposed change to 070 deals with an exemption for military personnel. Currently, licenses are good for one year—if someone has been called into active duty and deployed overseas or to another state and their gambling license lapses while they are gone, the proposed change would give the Commission the ability to allow renewal up to six months after they return and show that they are in good standing. They would also be able to renew at the lower fee. Ms. Hunter noted that military exemptions are something other agencies practice; therefore the concept would not be new to Legislators.

The second proposal deals with imposing penalties against minors who gamble. While there are good penalties through the Administrative Process for either the dealer or the operator who is allowing the person to play, there aren't any penalties for the minor. Staff is suggesting agency request legislation that would allow some type of a penalty against the

minor—perhaps a civil infraction could be issued that would go to district court or juvenile court if the minor is younger than 16 years old. **Ms. Hunter** affirmed the Administrative Process is more of a civil action, and that it would be consistent to have the underage gambling penalty be a civil infraction. The proposed legislation has been patterned similarly to what the Liquor Control Board does when someone under 18 tries to buy tobacco or cigarettes.

The last legislative proposal relates to barring known criminals. **Ms. Hunter** noted that agents doing undercover operations have found people in gambling establishments that they have had criminal cases wit, or who have been convicted of bookmaking, cheating, or other serious gambling offenses. This raises questions about what they are doing in the establishments. Other states such as Nevada and New Jersey have the ability to take someone who has been convicted of a crime and put them on a barring list. That list is given to the licensees and they are required to not let that person enter the establishment. She affirmed there is an administrative process as to how a person is put on the list. **Ms. Hunter** advised that she viewed the entire process as a preventative type of law. In keeping with the agency's mission to keep the criminal element out of gambling, the proposed legislation would help to keep people who have been convicted of gambling offenses out of gambling establishments.

**Representative Wood** asked staff to define the type of criminal intended to be barred and whether they would be only people who have violated gaming laws, or whether they would be felons, someone convicted of a misdemeanor, or someone convicted of fourth degree assault. **Ms. Hunter** responded that the proposed legislation definitely would not address people with fourth degree assault and that staff is most interested in people who have been convicted of gambling related crimes.

With no further comments, **Chair Ludwig** affirmed staff's intent to proceed with development of the proposals presented.

**Director Day** proceeded with the Director's Report. He drew attention to the Correspondence tab and addressed the response that staff submitted relative to Internet gambling editorial published by the King County Journal. A lot of discussion regarding Internet gambling has been generated and staff felt it was appropriate to provide a well thought out response as well as use the opportunity to provide public information on this topic. Director Day highlighted a few of the key points in the editorial noting that Internet gambling currently is and always has been illegal under Washington law, and, some other Internet gambling is also illegal under federal law. The editorial points out that the Department of Justice has recently been handing out indictments on Internet wagering operations. Director Day noted that people who gamble on the Internet have no idea who is operating the game, if the game is run honestly, if the winnings will be paid, or if the money will be used for criminal activity. Internet gambling also creates an uncontrolled opportunity for addicts and children to gamble. He referenced a study in California that cited a case of a college sophomore at Lee High University that accumulated \$5,000 in losses through the Internet in gambling who subsequently robbed a bank in order to get the funds to pay that gambling debt. Some of the study comments also noted (this might be a

generational consequence) that a young person talking about Internet gambling indicated that the \$300 wagered wasn't like it was real money. **Director Day** believed comments such as that provide a small concept of the potential problems for Internet gambling.

The legislation passed by the Washington Legislature provides law enforcement with an additional tool to pursue those who were profiting from or supporting illegal Internet gambling. Washington's gambling statutes now provide a wide range of gross misdemeanor and felony penalties for Internet gambling violations depending on the actual circumstances involved in the offense. **Director Day** noted the Washington State Commission was created to keep the criminal element out of gambling and to protect the public. The legislation supports the Commission's efforts of fulfilling that responsibility. It has also accomplished another purpose of getting the word out and providing public information. Commission staff has also been participating in a number of radio talk shows. Director Day noted that he has also been appointed as the Co-Chair of the North American Gaming Regulators Association (NAGRA) committee on Internet gambling, and that he is participating in the enforcement group a national task force on Internet gambling. He looked forward to significant progress in the way of enforcement, education, and legislation in the future.

Bingo & Casino Supplies: **Director Day** wanted the Commission to be aware that a petition has been filed with the Governor's Office by Magic Distributing regarding the decision by the Commission not to file or recreate the discriminatory pricing and credit rules. Director Day believed there is a significant question whether the process of petitioning the Governor actually applies to this decision—most of this law is directed toward amendments or new sections, and the Commission's action wasn't amending a new section, the Commission simply declined to file the petition. At the time of the meeting, the Governor's Office had not responded to the petition filing with their office.

**Director Day** noted a series of documents was included in the agenda packet for information only regarding correspondence to Governor Gregoire from the City of La Center in reference to the land acquisition request submitted by the Cowlitz Tribe.

**Director Day** also drew attention to a memorandum from Special Agent Mark Harris. He noted that at the end of the April meeting there was a substantial discussion regarding Match Play coupons at house-banked card rooms. The Commissioners requested staff to continue their investigation and prepare a summary report. Special Agent Harris reported the complaints were directed to the house-banked card rooms limiting coupons per day and placing restrictions on the coupons that weren't on the coupons themselves. In each case, our agents have made clear to the operators that it is not an allowable practice under the Gambling Commission rules. There were also a number of other complaints, discussion, and debate about whether or not the house-banked card rooms could tell people to leave their establishments because of various other circumstances. That issue seemed to fall outside of the Commission's jurisdiction, and in the end, a number of people were referred to the Attorney General's Office and Consumer Affairs.

Monthly Updates: **Director Day** drew attention to Senate Bill 2078 dealing with the authority for the NIGC regarding Class III gambling, noting it has come out of committee and moved on to the Senate floor at the federal level, and that it has not moved off the Senate floor. There is still significant debate around that; however, the intention is to move it off the Senate floor and vote. The Commission has not seen an advance version of the bill.

**Director Day** advised that he was recently made aware that the Department of Justice has filed a request administratively to the House and the Senate at the federal level requesting amendments to the Johnson Act. The purpose would be to require NIGC to clearly define the difference between Class II and Class III gambling. They have requested an amendment clarifying the element of chance and how that occurs in machines—if that is with the information or material that is actually inserted in the machine as opposed to being produced within the machine itself. Director Day anticipated that by initiating the federal legislation, the debate will begin in Congress relative to the request submitted by the Department of Justice.

**Chair Ludwig** called for public comments on the Director's Report. **Attorney Mell** advised she had a PowerPoint presentation and 12 minutes of testimony in reference to the ZDI / Jay Jerow / Declaratory Order contained in the correspondence file of the agenda packet as well as Item 15, which was scheduled for review on Friday.

**15. Petition – ZDI Gaming, Inc.**

**WAC 230-30-070 and WAC 230-12-050:**

**Joan Mell**-Attorney from Miller Quinlan & Auter, representing ZDI Gaming, noted that she has represented the company in a Declaratory Action brought before the Commission to approve the ZDI upgrade technology. ZDI also has before the Commission a Petition for rule change. ZDI believes the Commission has the power and authority to resolve the issue today of cash card technology, in particular with respect to the ZDI upgrade. Ms. Mell introduced Melanie Keiser and Jay Jerow, both from ZDI Gaming.

**Chair Ludwig** commented that he believed the Administrative Law Judge (ALJ) pretty much agreed with ZDI's position regarding the fundamental issue on the gambling device; but, he also said that ZDI needs authority from the Commission/rule making to validate the cash card issues. **Ms. Mell** affirmed that was essentially correct, that the ALJ abdicated the ruling and said this wasn't a gambling device—that the ability to use a cash card isn't an issue of a gambling device. She believed the ALJ really “passed the buck” back to the Commission as to whether or not the Commission wanted to adopt the ALJ's fairly narrow interpretation of the definition of cash. Ms. Mell acknowledged that the Commission could choose to interpret cash to include cash card technology because Black's Law definition does include cash equivalents. She suggested another option for the Commission would be to direct the staff to interpret the rules on pull-tab purchasing and gifting of prizes to include merchandise. She stated the cash card is equivalent to merchandise—a cash card is no different than merchandise in that regard, just as the Commission has allowed the use of gift certificates.

**Chair Ludwig** commented that Ms. Mell was mixing both issues—the fact that an appeal might be happening on behalf of the staff, together with the issues regarding ZDI’s petition. He asked Assistant Attorney General Ackerman whether ZDI’s cash card petition for rulemaking was a separate petition or whether it could be an amendment to either staff’s alternative or Mr. Harmon’s petition. **Jerry Ackerman**, Assistant Attorney General advised that he would have to take a close look and compare ZDI’s petition to Mr. Harmon’s petition (the initial petition), and staff’s alternative which flows from that petition. He suspected it could be treated as an amendment; however, he advised he was a little concerned about process at this point. Mr. Harmon is not present because he is in Africa and could not attend this meeting—he was advised in May that the Commission would hold over discussion of his petition until the July Meeting. Mr. Ackerman advised that he wouldn’t have a problem with ZDI proposing an amendment and then the Commission considering the motion at the July meeting when Mr. Harmon would be present. He noted the Commission already has the staff’s proposed alternative. Mr. Ackerman believed the only appropriate thing to do today would be to hear the petition for rule making.

Regarding the matter of the Declaratory Order, **Mr. Ackerman** advised that it has not been scheduled as a petition for review of the initial order that was entered by the Administrative Law Judge. Therefore, the Commission doesn’t have the other side of the case yet. Assistant Attorney General Paul Goulding who represents staff on this matter is not present. He suggested that it would be an awkward situation if Ms. Mell were to make representations on behalf of ZDI while not having staff’s side of the case present. To the extent the Commission is being asked to take up the Petition for Review today, Mr. Ackerman advised that he didn’t think proper notice has been given, the item was not scheduled on the agenda, and therefore, it would not be appropriate for the Commission to entertain a Petition for Review at this meeting. Mr. Ackerman commented that if ZDI’s intent today is to advocate for its petition for the rule making item already on the agenda, that is certainly within the Chair’s discretion to advance that topic to today. He cautioned that it will require diligence to separate the arguments about the propriety of the initial order from arguments about the wisdom of the proposed rule making—these are two separate things.

**Commissioner Parker** affirmed that was helpful advice. He advised Ms. Mell that she will find that the Commission is going to be inclined to go along with the Attorney General’s recommendation in terms of the Commission entertaining any kind of review. He commented that if that was Ms. Mell’s goal, then it was pointless to take the time to do that; however, if the goal is simply to make a case for a rule making application, then that ... **Ms. Mell** interrupted by commenting that the whole matter could be resolved, the Petition for Review, the declaratory action, and the whole issue surrounding cash cards—that was the issue she would put before the Commission. She advised that if it is the Commission’s decision that it would prefer to proceed by way of a formal Petition for Review of the declaratory order rather than ruling independent from a Petition for Review, then that is within the Commission’s discretion. She noted it is ZDI’s belief that the Petition for Review is a secondary formal procedure for carrying out the declaratory action that is not necessary—that the Commission certainly has the power and the authority to

make a determination based upon the information and the fairly complete record it has before it on the question of this particular equipment. She emphasized that ZDI was forced procedurally to pursue two things after the Administrative Law Judge made his ruling. ZDI had hoped to achieve a settlement, working with the staff to come to an agreement for an appropriate rule to present to the Commission on cash card technology. **Ms. Mell** affirmed that cash card technology is not exclusive to ZDI, given Mr. Harmon's petition that was rejected. Therefore, ZDI was left with petitioning based on ZDI's issue, and the cash card technology applies to pull-tab dispensing verifying equipment as well as petitioning for review. Ms. Mell advised ZDI has kept all of the options open for the Commission to choose how it would proceed.

**Commissioner Parker** verified that ZDI wanted to have all these options open, and he stated that he was prepared to move for the Commission to take testimony on the proposed rule; leaving the options open for ZDI on the other matters. **Commissioner Ellis** advised that he understood that the issue before the Commission right now is whether or not the Commission should accept for filing the petition for rule making that ZDI has submitted. He advised that moving the agenda item from Friday to Thursday, has left him in the position with not doing all of the preparation necessary thinking that he had an additional day to prepare. However, if the issue is simply whether or not to accept the petition for filing, then he advised he was not concerned about not completing the reading because there would be further opportunities to read the material before a final decision is made on the substance of the petition.

**Chair Ludwig** advised that in the interest of avoiding any further or unnecessary delay, he was sympathetic to Mr. Jerow and desired getting this matter processed in the most timely method fair. He commented that if the matter is not heard today, ZDI would then have the opportunity to consult with Mr. Goulding about what the new petition would do to the time limit, and also have an opportunity to discuss with Mr. Harmon whether he might consider amending his petition—then it could be concluded at any time after today. **Ms. Mell** responded that she believed ZDI's amendment was more appropriate to amend to staff's proposal because it was just one more amendment than what staff has already proposed on the cash card technology. She believed the only question before the Commission is whether or not the public has been given sufficient notice given the delay to July to consider the amendment to the staff's change.

**Chair Ludwig** inquired whether Ms. Mell discussed the petition with Mr. Goulding. **Ms. Mell** affirmed. Chair Ludwig inquired if either party consulted staff about amending their amendment. Ms. Mell replied that she could only represent Mr. Goulding's position and the discussions with respect to the proposed rule changes—and she was advised to pursue any rule change independent from the staff—that the staff would not cooperate by convening a stakeholder meeting of any kind, or of working with ZDI on preparing an agreed rule for Commission consideration. Ms. Mell reported that she advised Mr. Goulding that she would be making a presentation today and asked if he would be present; he responded by indicating that he was advised that his presence was not needed.



**Chair Ludwig** commented for the record that he was opposed to any further unnecessary delays that may not be fair to Mr. Jerow, and that having these things resolved would help if they can be resolved. He recalled that a rather extensive claim had been filed about the delays involved—which were inadvertent and which in part turned out favorable to Mr. Jerow. Now there is an issue about appealing that ruling, which is another issue too. Chair Ludwig proceeded with the petition for rule change only.

**Commissioner Parker** verified the rule change is an independent petition that ZDI is making at this time—it is not a petition to change the rule proposal that is now pending. **Ms. Mell** replied that she was open to whatever vehicle would work.

**Director Day** clarified that Item 15 in the agenda was the rule petition submitted by ZDI which staff treated as a separate petition. The decision before the Commission today with this petition would be to file or not file. That would start the clock—the normal process would be that at the next meeting this petition would be discussed again, it would be scheduled for a third meeting which is when the Commission would take final action on the petition. Director Day affirmed there are two other proposals which have essentially been tabled: Monty Harmon's petition, which takes a different tact and establishes the cash equivalent, and staff's petition which simply allows the use of gift cards. He explained each item is a separate filing. Director Day advised the Commission could take final action on staff's petition and Mr. Harmon's petition at the July meeting—final action could not be taken on ZDI's new petition. **Chair Ludwig** suggested that perhaps the best procedure for Mr. Jerow would be to file ZDI's petition so the Commission may talk about it as well as Mr. Harmon's petition and staff's petition all together.

**Mr. Ackerman** addressed a point of procedure, noting the Commission has given notice to the public, that item 15 is ZDI's petition for rule making. At the prior meetings, the Commission indicated to the public that staff's petition and Mr. Harmon's petition, which is a separate petition would not be taken up at this meeting, they would be taken up at the July meeting. He again counseled the Commission not to treat this matter today as an amendment to either staff's petition or to Mr. Harmon's petition because proper notice has not been given that the Commission would consider either of the petitions on this agenda. **Chair Ludwig** responded that he was simply suggesting that it be filed for further discussion.

**Ms. Mell** proceeded by handing out information for the Commission's consideration noting that ZDI prepared a bullet point summary/rebuttal to staff's analysis provided in the agenda packet and their analysis as to why staff was not recommending the language ZDI is proposing. Ms. Mell noted she had a PowerPoint presentation offering the testimony of Robert Tull and Frank Miller because ZDI felt it was important to hear the background on some of the potential positions staff is arguing, particularly on the point of whether or not this is an expansion of gambling—to include cash card technology within the authority of the Gambling Act, or the rules interpreting the Gambling Act.

**Ms. Mell** commenced with the PowerPoint presentation and emphasized that ZDI is petitioning for a rule change because of the ALJ's order and she affirmed that ZDI would

like approval of its technology. The technology is not distinct from what has already been approved—the technology and the cash card technology are virtually identical. Ms. Mell activated a recorded testimony provided by Mr. Tull—a former Commissioner. **Mr. Ackerman** interjected his concern that the PowerPoint presentation/testimony was not being picked up/recorded. **Ms. Mell** responded that she would provide it on a disk and she noted it would be part of the record.

**Ms. Mell** clarified the rule proposal by ZDI, by noting the exact language of the Commission rule ... “Gift certificates and gift cards may be used to purchase pull-tabs,” and that ZDI’s proposal is that the Commission embrace cash card technology narrowly at first (to see how it works) in the context of pull-tab gaming as an authorized activity. Some parameters have been inserted around the value that can be placed on a gift card by indicating that low tier winners only can be credited onto the gift card from the pull-tab activity; which puts in some protection that wouldn’t exist if it is unlimited in value.

**Ms. Mell** explained the rule change is needed for a couple of different reasons; first, the Legislature has declared that pull-tab gaming is a commercial stimulant and should be used for charitable purposes. This was authorized for charitable purposes. The industry is seeing a decline from the activity and the real benefits from the pull-tab gaming. She suggested this is an opportunity to protect against the decline—not promote it, but protect it. Secondly, cash card technology provides regulatory enhancements that have never been available to the Commission in any event in the gambling arena where cash is required. Ms. Mell commented that cash is not as traceable in the same way that cash card technology could be traced. If a rule that allows for the use of cash card technology is implemented, Ms. Mell suggested that as Mr. Tull offers in his testimony, the Commission may “regulate the Hell out of it.” Ms. Mell suggested putting the concept in place to see how it works, and putting parameters around it would enhance the Commission’s ability to keep corruption away from pull-tab gaming. She noted the whole intent of the Gambling Act was that pull-tab gaming was a social past time that should be protected, and not be restricted in any way shape or form to prohibit people who enjoy that form of past time. Ms. Mell suggested that because of the decline in revenues in the pull-tab industry, this was an opportunity to maintain the viability of pull-tabs and a part of the industry that it affects most; the charities. She affirmed that a significant public benefit is derived from pull-tab gain. Ms. Mell advised that the charities rely heavily on pull-tabs, noting that one of staff’s issues to ZDI’s petition for rule change is that it presents a risk of an expansion of gambling. Ms. Mell activated the testimony provided by Bob Tull and Frank Miller (testimony copy to be provided by ZDI).

**Ms. Mell** noted there were two other reasons why the ZDI rule proposal and the use of cash card technology would not amount to expansion of gambling. Cash card technology is already used—it has been adopted with the Tribal Lottery System and is used with Class II technology. She suggested that if in fact that was an expansion of gambling at the time it was incurred, then those technologies would currently be in violation of the State’s constitution. Ms. Mell noted that at the trial of this matter and in deposition testimony, the special agent speaking on behalf of Director Day concluded and testified under oath that cash card technology would not amount to an expansion of gambling.

**Ms. Mell** advised there were three rounds to explain or consider with respect to cash card technology and why it may or may not be objectionable: the technical aspects, the legal aspects, and the political aspects. She noted it was ZDI's position that the technology is agreed upon by Commission staff and stakeholders—there is no contest on the legal issue. She stated that cash card technology is not in violation of the rules; however, there's a lot of politics, and ZDI hoped to make the Commission comfortable with responding to the political question—especially the concept of an expansion of gambling. In terms of an agreement of technology, Ms. Mell noted that staff has already approved the use of a cash card to purchase pull-tab; and she suggested the further approval should be granted for the use of a cash card equivalent to award prizes (which included chips).

**Chair Ludwig** interrupted the presentation inquiring how much longer Ms. Mell intended to take, noting that as Chair, he chose to move the agenda item from Friday to Thursday hoping that it would be brief enough to accommodate Mr. Jerow. Chair Ludwig advised this item had been more time consuming than anticipated—and staff also needed an opportunity to speak in response. He noted that as indicated a commissioner was waiting to make a motion, unless Ms. Mell wanted to keep talking—and try to talk him out of it. **Ms. Mell** responded that if the Commission was prepared to move on this matter then she didn't need to go through the whole presentation.

At the request of Chair Ludwig **Ms. Hunter** responded on behalf of staff and addressed the rule summary in the agenda packet. Staff recommends denying the petition for many of the same reasons that have been discussed in the prior meetings with Mr. Harmon's petition. She identified four reasons why staff recommended denying the petition. There has been a lot of effort in trying to convey that this would not be an expansion of gambling. Staff felt it was important to note that this would open the door to other proposals that would combine gift cards and pull-tab dispensers. Ms. Hunter noted that Ms. Mell has done a good job of showing what the pictures look like; however, how it actually works is an important consideration. Ms. Hunter expressed concern about combining the functions—taking something that looks like a slot machine and adding features to it that act a lot like a slot machine.

**Ms. Hunter** addressed comments made in past hearings about cash cards being the technology of today. She affirmed cash card are available at Starbucks and Home Depot, etc. However, she emphasized that gambling is not like buying a latte—and the element of adding winnings back on, or, a replay of the credit makes it much different from simply having a gift card similar to Starbucks. Ms. Hunter also noted there has been a lot of previous discussion about things that staff has previously approved. She affirmed there was a limited amount of time when gift cards were allowed at the Buzz Inn Steakhouse, which is what led to Mr. Harmon's petition. The information that isn't conveyed is that when that came to the Director's attention, that prior activity was pulled back and it has not been an allowed activity.

**Ms. Hunter** addressed a policy concern previously discussed in reference to using winnings being put back on a gift card, noting it would encourage a person to stay and play

out that gift card at that specific business—there isn't a choice. She felt that was very different than getting cash for a winning pull-tab—a person may decide they are going to turn that back and play more pull-tabs; or, they may decide they have had enough and take those pull-tab winnings and purchase gas or groceries.

**Ms. Hunter** commented on the previous discussion on how this will only be limited to the pull-tab winners. She noted that pull-tab game prizes are almost always low tier prizes under \$20.

In closing, **Ms. Hunter** emphasized that staff recommends denial. Staff agrees with half of the petitioner's request, which is to allow the purchase of pull-tabs with gift cards—which resulted in staff's rule alternative. Regarding the petition, the Commission has the following options: file the rule, deny it and state the reasons for denial, or propose an alternative.

**Commissioner Parker** asked if there were any typical or general criteria for denying a petition, such as if a petition rule would result in a rule which is clearly in conflict with an existing law—which would be well within the Commission's discretion to deny filing the petition. **Ms. Hunter** affirmed and advised the Commission may also make a policy determination as to why the Commission didn't want to file a petition. She advised there isn't a place in the APA or rules that provides a template of specific reasons for denial.

**Senator Prentice** commented that with all discussion about whether or not this is an expansion of gambling, it certainly placed the petition in the policy area in her opinion. She emphasized that the Legislature sets policy. She cautioned that the Legislature could crank up quickly and prefile something. Senator Prentice emphasized this issue made her extremely uncomfortable. She questioned how many blunders and how many changes in the law have already been made under the guise of being told "it will just do this." Even in very general terms she emphasized that she has seen interpretations that go way beyond what anyone intended. Senator Prentice was emphatic that she didn't want to see an expansion of gambling, and that the Legislature controls that—and she assured the audience the Legislature will be prepared for legislation.

**Mr. Ackerman** advised that the test for a denial would be whether or not the rule is arbitrary or capricious. Historically, when this Commission has denied petitions it has been for things like the Commission's belief that a proposal was an expansion of gambling not intended by the Legislature in any of the sub-statutes the Commission operates under. In this case for instance, the Commission might look at what the Legislature intended when they authorized the playing of pull-tabs in 1973, and conclude that the type of activity that is now being proposed is not what the Legislature intended, and the Commission might decide to decline to file this rule. It has historically been a legal reason, legal in the sense that as individuals, each Commissioner has looked at something and concluded that they don't believe the amendment being proposed is consistent with what the Legislature intended. He noted that in some cases the Commission has declined to file based upon something that is more accurately described as a policy decision—that the State Constitution and the statutes in 1973 currently do reflect an intent to pervasively regulate

gambling and to not expand gambling. The Commissioners have given voice to a number of those types of policy concerns. **Mr. Ackerman** affirmed the test is that the rule is not an arbitrary or a capricious standard, which is normally met by each commissioner giving well-reasoned reasons or for the position taken—it reflects consideration of legitimate policy or legal concerns.

**Ms. Mell** responded that what is lost if the Commission chose not to consider ZDI's petition and simply looked at the staff's petition is a lengthy discussion and opportunity to debate the regulatory benefits; and, how the Commission can better control all of the gaming industry, and in particular pull-tabs. She noted the testimony provided in the materials contains several examples of the regulatory benefits of cash card technology. She agreed the Commission was certainly in a position to implement whatever rules are deemed appropriate. Ms. Mell noted that staff and the speaking agent for Director Day have testified that there are no regulatory concerns about cash card technology; that it is a benefit, an enhancement. There is an audit trail, there is an opportunity to keep tabs on an industry that is lacking because it is a cash exchange. She emphasized that the real question is "why are we even emphasizing cash, why not cash card equivalency?"

**Chair Ludwig** commented that he hoped Ms. Mell might respond to the issue that Ms. Hunter raised regarding the fact that they are usually only redeemable at the place where the individual is gambling, which is not like Starbucks or Lowes, where they are redeemable all over the state. **Ms. Mell** affirmed that is beneficial, and she said the cash cards that ZDI would be using in the context as proposed minimizes the risk of money laundering. Chair Ludwig responded that it was not like other cash cards or debit cards, which was why he was in opposition of Mr. Harmon's petition, which proposed something that went far beyond cash equivalent. Chair Ludwig commented that his debit card wasn't cash equivalent. Ms. Mell agreed that cash cards are a different technology than a debit card; however, the Commission as well as the Legislature has the opportunity to put parameters around how that would work effectively.

**Commissioner Bierbaum** suggested that the issue before the Commission is whether the Commission is going to accept the petition for filing—not the merits of the petition. She emphasized that if it were clear that this represents an expansion of gambling on its face, she would support not accepting the petition. However, the dialogue or discussion the Commission hasn't had, either from the staff, or Mr. Harmon, or ZDI, is what that means. As one commissioner, she advised she would accept the petition for filing and instruct staff, ZDI, Mr. Harmon, and everybody else to discuss that topic alone because that seemed to be what the Commission cares about. The Commission doesn't want to see an expansion of gambling; however, she clarified that she didn't understand enough about why something is or isn't an expansion of gambling.

**Commissioner Ellis** advised that he was sympathetic with all of the concerns that have been expressed and particularly with Commissioner Bierbaum's comments. However, at the same time, he believed that the issues being raised are sufficiently connected to Mr. Harmon's petition and to the staff alternative petition, and to the appeal. He welcomed the

declaratory action, and noted that it made sense to consider the petition before the Commission.

**Commissioner Ellis** made a motion that the Commission accept the petition for filing and for further discussion. The motion was second by **Commissioner Bierbaum**.

**Commissioner Parker** advised that he intended to vote against the motion because he believed the proposal goes beyond simply facilitating or enhancing the use of cards. Commissioner Parker believed the proposal inevitably will result in mechanized pull-tabs. Commissioner Parker stated this act would constitute a significant expansion of the policy that the Commission has been following in terms of the use of this kind of technology—an expansion which gets the Commission into a whole new arena regarding types of gambling and ways to gamble. Commissioner Parker believed that is what lies at the essence of staff's objections.

**Commissioner Parker** addressed Ms. Mel and advised her that the arguments she made on behalf of the petitioner were off the mark. That the evidence she pointed to and used in the PowerPoint was also off the mark—they didn't speak to the main point. He emphasized that having former officials from the Gambling Commissioners discussing the historical role of interplay between innovations of technology and the rule making process of the Commission, didn't speak to the point at issue in this petition. He indicated that the comments regarding Dallas Burnett's role of being an official representation of the Commission staff's position was inappropriate and not helpful to ZDI's cause—it was off the mark and didn't contribute to the Commission's understanding of what the petition was about. Commissioner Parker said that to refer to the Tribal Lottery System as an example of this type of technology and to make the argument that this should be administratively approved by the Commission because of that precedent was also not relevant. He noted the Tribal Lottery System stands on an entirely separate track based on compacts that are negotiated pursuant to federal authority, which are ratified by the Legislature. Commissioner Parker explained they have their own separate independent authority for what they are and what they are not. Commissioner Parker advised Ms. Mell that the arguments she gave on behalf of this proposal were not persuasive, and they did not address his concerns that this would lead the Commission in the direction of taking a very significant step down the road to approving something that ultimately would be a very significant expansion of gambling.

**Melanie Kieser**, President of ZDI Gaming advised that while she has never been formally represented, she has gone through much of this long drawn out process with Mr. Jerow. She emphasized that mechanized pull-tabs already exist. ZDI has machines in the field right now—they are not slot machines, they have a finite set of tickets, and they have a pre-designed set of winners. They are not a slot machine and ZDI is not asking for slot machines. ZDI is asking for an ability to enhance the usage of a machine. ZDI is not turning them into slot machines. "There is nothing in here that is changing." ZDI is taking the confines that are already within the regulations and asking to use a cash card because it would enhance the business owner's ability to enhance their business. Ms. Kieser didn't believe that would be expanding gambling and it wouldn't be doing anything illegal. She

advised that their intent was to help the business grow. She stated it was a part of commerce, and she noted that gambling in the pull-tab sector of the industry was not expanding, it's declining dramatically, especially since the smoking ban.

**Chair Ludwig** agreed the machine was not a slot machine; however, he inquired if it was an electronic pull-tab machine. **Ms. Keiser** affirmed it would be considered electronic—however; they have not changed the machine dispenser—nothing technology wise has been made to change the confines of the game itself. The only thing ZDI has done is improve the accounting, and improve the ability for the operator/owner to generate reports. Everything that has been done would actually improve the Commission's ability to regulate pull-tabs. Regarding cash cards or credits, Ms. Keiser noted it has been going on for 20 years—and there is a human component in the exchange.

**Ms. Keiser** advised that she has been in the industry for over 22 years and that she has seen a lot of theft and a lot of fraud that ruins pull-tab operators because they don't have the capability to maintain staff to control the theft that does occur. She acknowledged that ZDI's proposals were specifically targeted to improve theft, to improve fraud, and to improve her business as a business owner, because over the last five years she has watched her business go into the toilet.

**Ms. Keiser** addressed the fact that a large portion of the profit made at the bingo halls that went back into the charities came from pull-tabs. Since people can't smoke in a bingo hall anymore they are going to a reservation facility to smoke and gamble. She stressed that ZDI was simply trying to maintain a sector of their business. She defied the notion that ZDI was expanding gambling, noting that it was not happening in her sector—that ZDI was modernizing the industry. She drew the analogy of the evolution of telephones to cell phones, to the current ability to have cell phones that can take pictures. Ms. Keiser stated they are holding on to a shoe string, trying to maintain their business and trying to do it within the confines of the law.

**Representative Wood** commented that some of Ms. Keiser's arguments hit home because he heard them about seven years ago. The card rooms said the same thing—"that the big guys are coming in, we can't regulate," which were some of the reasons the Legislature passed the house-banked card room bill. The unforeseen circumstance was the huge expansion the Legislature didn't see coming. Representative Wood advised that he was a little leery of changing this technology in a declining industry. **Ms. Keiser** replied that she understood Representative Wood's position; however, based on what she was seeing, the industry would be crawling back to the point they were at eight years ago.

**Senator Prentice** emphasized the role of the Gambling Commission is not to promote any part of the industry; their role is regulatory and law enforcement. Referring to the arguments about the smoking ban, she again emphasized that it was the voters who approved the initiative—which apparently hasn't sunk in yet, and that it is not for the Legislature to correct that decision.

With no further comments, **Chair Ludwig** called for a recess at 3:20 p.m. and recalled the meeting at 3:40 p.m.

**Ms. Mell** advised that she appreciated the Commission taking the time to hear this matter today. She expressed her frustration as an attorney representing a business/license holder before the Commission and not having the ability to rely on a particular formal vehicle to have a matter heard by the Commission. She thought it would be helpful if the Commission were to direct staff and the stakeholders to sit down at a table and come up with a proposal that addresses all of the problems rather than debating the merits of the rules on the record in a public forum. She suggested it may accomplish achieving one recommendation covering all perspectives, and she was sure that everyone from the stakeholder committee would be able to prepare something before the July hearing.

**Chair Ludwig** called for the vote, *vote taken; the motion passed with three aye votes, Commissioner Parker voted nay.* **Chair Ludwig** advised the rule would be filed for further discussion, and he hoped that in the meantime ZDI would continue talking with staff and Mr. Harmon to see if this matter could be expedited.

## **2. New Licenses and Tribal Certifications:**

**Commissioner Ellis** made a motion seconded by **Commissioner Bierbaum** to approve the list of new licenses, changes, and tribal certifications as listed on pages 1-28. *Vote taken; the motion passed unanimously.*

## **3. Petitions for Review:**

**Tin H. Chau, Card Room Employee:**

**Assistant Attorney General Bruce Marvin** was present for the State as well as **Petitioner Tin Chau**. Mr. Chau and Mr. Marvin provided their testimony in the matter of Mr. Chau failing to fully disclose the circumstances regarding the summary suspension of his Tribal Gambling License in 2005. A recording and a transcript of the hearing is available upon request. At 3:45 p.m., at the conclusion of testimony, **Chair Ludwig** called for an executive session to deliberate the case, and he recalled the meeting at 3:50.m.

**Commissioner Ellis** advised Mr. Chau that the Commission understood his reasons for appearing and appreciated his effort. Commissioner Ellis stated that he also hoped Mr. Chau realized that that the Legislature has directed the Commission to be very strict in the Commission's licensing procedures in ensuring that people who engage in criminal or dishonest conduct are not active in the gaming industry. He noted the Commission has had to affirm the revocation of licenses for people who were guilty of far less serious offenses than Mr. Chau's offense of writing four checks for \$1,000 on a closed account; and, under the circumstances the Commission's hands were tied.

**Commissioner Ellis** made a motion seconded by **Commissioner Parker** to affirm in all respects the Initial Order of the Administrative Law. *Vote taken; the motion passed with four aye votes.*



**Sharkey's Sport Bar and Grill:**

**Assistant Attorney General Bruce Marvin** was present for the state and **Petitioner Mark Werts** was not present. The first issue was whether or not to grant a continuance on behalf of Mr. Werts. Mr. Marvin advised that he was in an awkward situation of having to represent Mr. Werts and the State. He noted that Commission staff strongly opposes Mr. Werts' motion to continue the proceedings. WAC 230.50.700 contains the provision that governs the granting of continuances. The burden upon a person moving for a continuance is that the continuance must be timely made and that there is a proof of good cause shown to reach the threshold for granting a continuance. Mr. Marvin provided background information regarding Mr. Wertz as the owner of Sharkey's Sports Bar and Grill and the fairly extensive history of non-compliance dating from 2004. A recording and a transcript of the hearing is available upon request.

**Commissioner Ellis** made a motion seconded by **Commissioner Bierbaum** that the petitioner's motion for a continuance be denied. **Commissioner Parker** advised that he didn't see any basis to grant the petitioner's motion noting there was a pattern of evidence, a record of behavior that in fact argues the other way. *Vote taken; the motion passed unanimously.*

**Commissioner Bierbaum** made a motion seconded by **Commissioner Parker** to uphold the findings, conclusions and orders of the Administrative Law Judge. *Vote taken; the motion passed unanimously.*

**4. Default Hearings:**

**Northwest Game Services:** (Not present)

**Amy Hunter**, Administrator, Communications and Legal Division reported that staff is requesting a default order be entered to revoke Northwest Game Services' gambling service supplier license. The business appears to be closed; when a special agent went to retrieve some records, there was a for sale sign on the house. Ms. Hunter explained that there are a number of record keeping requirements that operators must follow, and Northwest Game Services was a business that could be contracted to facilitate the recordkeeping functions and retain the pull-tabs for different businesses. The Director signed charges and brought them forward because the licensee operated with an expired license for three months. The licensee also failed to provide various records to the Commission and failed to pay taxes. The certified mail receipt card was signed by the licensee. Staff made a courtesy call to the licensee and the phone continually rang. The licensee did not respond to the charges and by failing to respond they have waived their right to a hearing. The Commission may enter a final order of default. Staff recommends that the Commission revoke Northwest Game Services' supplier license.

**Commissioner Bierbaum** made a motion seconded by **Commissioner Ellis** that the Commission enter an order revoking Northwest Game Services' service supplier gambling license. *Vote taken; the motion passed unanimously.*

**Jenni Schaefer, Card Room Employee:** (Not present)

**Ms. Hunter** reported that Ms. Schaefer, an accounting employee, presented fake and duplicate invoices and admitted to taking approximately \$5,000 to \$6,000. Based on the records, the Commission believes it was probably closer to \$70,000. Staff is requesting a default order be entered to revoke Ms. Schaefer's card room employee license. In the case of summary suspensions, Ms. Hunter advised that an agent generally personally serves them—and in the three cases presented at this meeting, there is no question that each of the licensees received their order. Ms. Schaefer has waived her right to a hearing, and staff requests the revocation of Ms. Schaefer's card room employee license.

**Commissioner Parker** made a motion seconded by **Commissioner Bierbaum** that the Commission enter an order revoking Jenni Schaefer's card room employee license to conduct gambling activities. *Vote taken; the motion passed unanimously.*

**Jason Miller, Card Room Employee:** (Not present)

**Ms. Hunter** reported that Jason Miller was working as an accounting employee and cashed checks totaling approximately \$65,000 that were above what the casino really needed to do business. He was charged with first-degree theft in Douglas County Superior Court. That case is still pending trial, which is scheduled for later this month; however, it may get continued. Staff is requesting that Mr. Miller's license be revoked.

**Commissioner Bierbaum** made a motion seconded by **Commissioner Ellis** that the Commission enter an order revoking Jason Miller's card room employee license to conduct gambling activities. *Vote taken; the motion passed unanimously.*

**Nga Tran, Card Room Employee:** (Not present)

**Ms. Hunter** advised that Ms. Tran was working as a floor supervisor at the Silver Dollar Casino and conspired with others to cheat by using marked decks of cards. The case against her is pending. She was personally served the summary suspension order and did not respond. Staff is recommending that the Commission revoke Nga Tran's card room employee license.

**Commissioner Ellis** made a motion seconded by **Commissioner Bierbaum** that the Commission enter an order revoking Nga Tran's card room employee license to conduct gambling activities. *Vote taken; the motion passed unanimously.*

##### **5. Summary Suspension Hearings:**

**Adam T. Froese, Card Room Employee:** (Not present)

**Ms. Hunter** explained that Adam Froese had a license as a card room employee and he gave pull-tabs to patrons without collecting the payment. He admitted that he gave about \$400 to \$600 dollars in pull-tabs to his friends and then they later gave him a portion of the winnings. When staff reviewed the surveillance video and records, it was determined that Mr. Froese probably took closer to \$1,000 under this method. He was terminated by his employer and he is not currently working. The evidence includes his admission, two statements from other people who were involved in this scheme, gambling records, and the

surveillance footage. Staff is requesting that an order to summarily suspend Mr. Froese's license be signed.

**Commissioner Bierbaum** made a motion seconded by **Commissioner Ellis** that the Commission enter an order summarily suspending Adam Froese's card room employee license to conduct authorized gambling activities, pending an opportunity for a formal hearing by an Administrative Law Judge. *Vote taken;* the motion passed unanimously.

**Brian Dunn, Card Room Employee:**

**Ms. Hunter** reported that Brian Dunn was employed as a card room employee for Z's at Zeppo's. He used a method of concealing and then taking gambling chips from the table. An agent looked at the surveillance video and found that he used these different actions about 24 different times and took over \$2,300 worth of chips. Agents interviewed Mr. Dunn and he admitted to taking about \$700 to \$900 in chips. The card room terminated his employment and he is not currently working as a card room employee. The evidence includes his admission, different surveillance tapes, and recovered chips from Mr. Dunn's car and from his home. Staff is requesting an order to summarily suspend Mr. Dunn's license be executed.

**Commissioner Ellis** made a motion seconded by **Commissioner Bierbaum** that the Commission enter an order summarily suspending Brian R. Dunn's card room employee license to conduct authorized gambling activities, pending an opportunity for a hearing before an Administrative Law Judge. *Vote taken;* the motion passed unanimously.

**6. Other Business/General Discussion/Comments from the Public:**

**Chair Ludwig** called for public comments.

**Max Faulkner**-Faulkner Enterprises reminded the meeting attendees of a sponsored winery tour.

With no further business, at 4:20 p.m., **Chair Ludwig** called for an Executive Session to discuss pending investigations, tribal negotiations and litigation. At 5:10 p.m. the open public meeting was recalled, and Chair Ludwig adjourned the meeting.

Minutes submitted by,

Shirley Corbett  
Executive Assistant

**COMMISSION MEETING  
FRIDAY, JUNE 16, 2006  
MINUTES**

**Chair Ludwig** called the meeting to order at 9:35 a.m. at the Marcus Whitman Hotel & Convention Center located in Walla Walla. He introduced the following members present:

**MEMBERS PRESENT:**     **COMMISSIONER CURTIS LUDWIG**, Chair, Kennewick  
                                 **COMMISSIONER JOHN ELLIS**, Seattle  
                                 **COMMISSIONER PEGGY ANN BIERBAUM**, Quilcene  
                                 **SENATOR MARGARITA PRENTICE**, Renton  
                                 **SENATOR JEROME DELVIN**, Richland  
                                 **REPRESENTATIVE JOHN SERBEN**, Spokane  
                                 **REPRESENTATIVE ALEX WOOD**, Spokane

**STAFF PRESENT:**        **RICK DAY**, Director  
                                 **GARY DRUMHELLER**, Acting Ast. Director-Field Ops.  
                                 **DAVID TRUJILLO**, Assistant Director-Licensing  
                                 **AMY HUNTER**, Administrator- Communications and Legal  
                                 **JERRY ACKERMAN**, Assistant Attorney General  
                                 **SHIRLEY CORBETT**, Executive Assistant

**Chair Ludwig** noted a staff report on Multiple House-Banked Card Rooms was carried over from Thursday's meeting and added to Friday's agenda.

**7. Approval of Minutes:**

**Commissioner Ellis** made a motion seconded by **Commissioner Bierbaum** to approve the minutes of the regular meeting of April 13-14, 2006 as presented. *The motion passed unanimously.*

**Presentation – Multiple Ownership of House-Banked Public Card Rooms:**  
**Assistant Director Dave Trujillo** advised this report was an informational summary report for the concentration of ownership of house-banked card rooms (HBCR). He reported that while there are over 95 licensed house-banked card rooms, that doesn't mean there are 95 independent ownership structures. To appear on the staff generated list, an

owner must have a substantial (10 percent or more) ownership in three or more house-banked card rooms. **Mr. Trujillo** explained that since the inception of the HBCR program, the Commission has taken the position not to limit ownership. Since 2002, when the staff began providing this report, there has only been one change in this report. Mr. Trujillo provided a visual schematic representation of the types of ownership structures in Washington. It included Washington Gaming Inc., Michels Development, Great Canadian/Great American, Crazy Moose/Coyote Bobs, Bowers, and the new ownership of the Bakunowicz schematic. Mr. Trujillo reported that approximately 36 of these locations have some form of out of state ownership; however, it may include one person out of many owners—only a few are fully owned by out of state owners. He noted there are approximately 8,000 public card room licensees associated with the licensed house-banked card rooms in Washington.

**Director Day** verified that the ownership of Washington Gaming didn't change in the last year. **Mr. Trujillo** called upon Corey Coyle to respond. **Corey Coyle** introduced himself as the President of Washington Gaming effective October of last year, at which time the ownership structure of Washington Gaming changed. He reported that Tim and Mike Iszley's interests were bought out of the company, and Tim stepped down from management of the company on a day-to-day basis. Dan Sutherland, a Canadian citizen, purchased the interests last October. Washington Gaming holds 11 licenses, 10 of which are operating today—the Riverside Casino is currently licensed but is not operating and should be operating within a month or so.

**Commissioner Ellis** asked Mr. Coyle to identify the card rooms. **Mr. Coyle** identified the following: Silver Dollar/Golden Nugget Casino, the Silver Dollar's in Mt. Lake Terrace - Mill Creek - Tukwila – SeaTac - Renton, and two in Tacoma, the Golden Nugget Casinos in Shoreline and Tukwila, the Royal Casino in Everett, and the Riverside Casino in Tukwila. There were no other comments or questions.

**8. License Fees for Military Personnel:**

**WAC 230-04-204** and **WAC 230-05-035** (Companion Rules Simplification Project Rule) **Dave Trujillo**, Assistant Director advised the proposed amendment to WAC 230-04-204, Fees for Individuals and the companion Rules Simplification Project Rule WAC 230-05-035 were up for final action. Staff is proposing this change to allow deployed armed services personnel to renew their individual licenses at the annual renewal rate for up to six months after returning from deployment, without additional cost. The licensee will simply renew their license and provide proof of return from active military service within the previous six months. He affirmed that staff sees no regulatory concerns involved in changing the rule. He reported the Commission received correspondence after the April 2006 Commission meeting from John Bergener, which has been included in the packet. Mr. Bergener advised that he returned from duty in Iraq, his license had expired, and he was required to pay for a new license. Staff recommends adoption of the rule to be effective 31 days after filing. The companion rule simplification project rule would be effective January 1, 2008.

**Chair Ludwig** questioned if the fee proposal was similar to other state agency's fee schedule for military personnel. **Mr. Trujillo** affirmed other state agencies have codified rules or laws that do consider members of the armed services, and the intent of this rule is to codify a Commission rule allowing deployed armed service personnel to pay a renewal rate and not the "new licensee" rate for a license. **Chair Ludwig** called for public comments and there were none.

**Commissioner Ellis made** a motion seconded by **Commissioner Bierbaum** to approve the amendment to WAC 230-04-204 to be effective 31-days after filing in the form presented by staff. *Vote taken; the motion passed unanimously.*

**Commissioner Ellis made** a motion seconded by **Commissioner Bierbaum** that the companion Rules Simplification Project rule creating WAC 230-05-035 to be effective January 1, 2008, be approved by the Commission. *Vote taken; the motion passed unanimously.*

## **9. Rules Simplification Project:**

### **Chapter 06 – Rules for All Licensees**

**Amy Hunter**, Communications and Legal Division Administrator reported that Chapter 06 is the section that applies to all licensees. She noted one change from the last Commission meeting in WAC 230-06-040, which dealt with recording gambling promotional items for charitable and non-profit organizations—it did not apply to all licensees. That particular rule has been removed and staff will be inserting it in the rules for charitable and non-profit organizations.

**Ms. Hunter** highlighted three other rule changes. WAC 230-06-015 deals with not allowing someone who is intoxicated to engage in gambling activity. That prohibition existed under the pull-tab and the card room sections; however, it did not appear to apply to all gambling activities. It appropriately should apply to all gambling activities, which has been added into this section.

WAC 230-06-010 now includes the restriction on the age to gamble—the final changes affect a series of different rules and deals with all of the time lines the Commission has for when things have to be reported to the Commission. At the suggestion of the Chair, staff scheduled things to be due either 30-days or 10-days after a change rather than the previous 14-day, 20-day, or 30-day deadlines. Staff recommends final action with an effective date of January 1, 2008. **Chair Ludwig** called for questions and comments.

**Gary Murrey**-Great American Gaming Corporation advised that he worked with Project Manager Beth Heston on these rules for many months and thought everything had been covered; however, there was one major outstanding issue that shouldn't be overlooked. He noted that WAC 230-06-005 dealing with accepting checks in gambling activities, currently allows the acceptance of payroll and government issued checks as third party checks. He noted that for some reason that isn't in the existing rule; or perhaps it got moved or mixed up. **Ms. Hunter** affirmed the rule addressed a third party check drawn on

a personal account, and agreed a government check/payroll check would not count as a personal account.

**Commissioner Bierbaum** thought the rule was awkwardly written and not clear. She commented that she had to read it over a number of times to figure out exactly what was being permitted or not. She suggested that it might be better to write it in terms of what an individual can't do rather than what they can do. **Ms. Hunter** recommended pulling the one rule and asked the Commission to adopt the remainder of the package. A revised WAC 230-06-005 would be provided at the August meeting for final action. **Chair Ludwig** called for public comments and there were none.

**Commissioner Ellis** made a motion seconded by **Commissioner Bierbaum** to adopt the proposed rules in Chapter 06 – Rules for All Licensees of the Rules Simplification Project with the exception of WAC 230-06-005 as presented by staff to become effective Jan 1, 2008. *Vote taken; the motion passed unanimously.*

#### **10. Gambling Devices at Trade Shows and Conventions:**

##### **WAC 230-12-337:**

**Mr. Trujillo** advised that WAC 230-12-337-Manufacturers and Distributors Transporting and Displaying Gambling Devices for Trade Shows and Conventions was up for final action. Staff proposed this rule change. Current RCW states the possession or transportation of gambling devices is illegal unless it is in furtherance of the gambling activity authorized by an RCW or Commission rule. This rule would allow licensed manufacturers and distributors to transport, display, and take orders for authorized gambling devices at trade shows and conventions. The target audience of the trade show must be operators of authorized gambling activities. Staff sees no regulatory concerns with this rule. In March, Ernie Stebbins, the Executive Director of the Washington Indian Gaming Association submitted a proposal for alternative language for this rule change. On June 12, the Commission received a letter from Mr. Stebbins withdrawing his proposed rule language. Staff recommends adopting this rule to be effective 31 days from filing.

**Chair Ludwig** called for public comments.

**Ernie Stebbins**-Executive Director for the Washington Indian Gaming Association (WIGA) clarified that WIGA is not opposing the language proposed by staff. WIGA supports the language proposed by staff, although they believe it could have been written with different language to make it more helpful. Mr. Stebbins suggested that the best thing to do at this point would be to let the Commission act on staff's language and perhaps direct that a dialogue be initiated between the Washington Indian Gaming Association and Commission staff to look at different language in the future.

**Commissioner Ellis** made a motion seconded by **Commissioner Bierbaum** to adopt proposed WAC 230-12-337 in the form presented by staff to be effective 31-days from filing. *Vote taken; the motion passed unanimously.*

## **11. Petition – On-Duty Card Room Employees Contributing to PSJ's:**

### **WAC 230-40-610:**

**Ms. Hunter** noted the rule was filed at the last Commission Meeting and is up for discussion only. She explained there are times when a card room will actually require their employees to participate in the card game when a Poker game is just getting started. The card room employee would have their own cards and they would make their own betting decisions. She explained Poker games can also have player supported jackpots attached with them, and if a certain hand is achieved the person might win a jackpot ranging from \$100, to something as large as \$2,000 or \$3,000 if not larger. Current Commission rules do not allow an on-duty employee to win the PSJ. Mr. Thompson, the petitioner feels that if an on-duty card room employee wins the rake, which is usually \$1 to \$2, it should be returned back to the card room employee because it isn't fair to make them put money into a pot if they can't win the PSJ; or, he feels that he should be eligible to simply win the player supported jackpot. After much staff review and consideration, the universal response was that the restrictions on allowing the person to win the PSJ directly related to the appearance and the integrity of the game, which is an important thing when PSJ's are allowed.

In an alternative rule, Mr. Thompson asked to have the rake stay with the card room employee and staff felt that if the card room employee started getting that rake there would be questions raised by other players. **Ms. Hunter** affirmed previous testimony indicated that Poker players are Poker players, and they wouldn't be surprised when an on-duty employee gets that money back. Commission staff contacted five states regarding their regulations: Arizona and California allow the card room employee to play and to win the jackpot, Nevada does not prevent it; however, they do not encourage it because of the potential problems and appearances. Colorado does not allow the card room employee to play whether they are on or off duty. Lastly, Mississippi doesn't allow the on-duty card room employee to play; however, an off-duty card room employee may play and win the jackpot.

**Chair Ludwig** inquired who would make the decision about giving the on-duty employee their rake back. **Ms. Hunter** believed that Mr. Thompson was asking that the Commission make the decision in rule to either allow the on-duty player to win the jackpot or have the money go back. Staff recommends not allowing either option, and recommends leaving the rule as it is. Staff believes that allowing the card room employee to be able to win the jackpot would hurt the integrity of the game. Staff has concerns regarding potential collusion when there are larger amounts of money at hand. Staff also anticipated that it would generate a lot of player questions.

**Mr. Ackerman** offered a procedural note, noting the rule is up for further discussion. The rule in front of the Commission provides that the on-duty card room employee not contribute to their share of the winnings of the prize awarded. He commented that if the Commission were to adopt the other alternative that Mr. Thompson has discussed with staff (that the employee be able to win the pot), the Commission would need to take some action to amend the proposed rule. Currently the rule filed says the on-duty employee may not participate or contribute to the pot.



**Commissioner Ellis** verified that staff initially had concerns about the employee winning the PSJ. The alternative at that time was consistent with the language that Mr. Ackerman just addressed, that the employee would not contribute to any pots during the course of the day; and that they would get their dime back out of the ante and that they could fold immediately. If they won, they would not contribute either. He noted that Mr. Murrey has suggested a practical alternative, to only focus on the pots that the employee wins—and in those cases the dealer returns the rake, the \$1 or \$2 rake to the employee's pot—in that sense they are not contributing to the PSJ. **Commissioner Ellis** believed that seemed to make a certain amount of sense. The possibility being addressed now is the possibility, although the staff does not agree, that the employee is normally wearing a badge, and if there are questions, the dealer would explain to the other players that the employee is getting their \$1 or \$2 back because they can't win the player supported jackpot. Commissioner Ellis advised that seemed to make practical sense and he didn't believe that other players would be too concerned about that.

**Ms. Hunter** agreed that while that was an option, she didn't think staff would be too excited about it; however, the Commission could certainly give any rule a try and see what happens. She suggested the rule would need some rewording if the intent is to not have the on-duty card room employee contribute only on those hands that they win. She affirmed that staff could develop an alternative for next month at the Commission's instruction.

**Mr. Ackerman** questioned if the language in the proposed rule was submitted by Mr. Thompson or by staff. **Ms. Hunter** replied that staff assisted Mr. Thompson—he contacted the Commission with an idea; but, did not have the language so staff drafted the language. Mr. Ackerman noted the first sentence in Subsection 6 appears to have some problems in the way that it is constructed and it is unclear as to what prizes can and cannot be won.

**Commissioner Ellis** addressed Mr. Thompson's initial hand written proposal attached to his hand written petition, and noted that the second paragraph indicates that the jackpot dollars should be either returned to the player, (i.e. employee) when they win a pot, or the player must be deemed eligible. Commissioner Ellis affirmed that language actually proposes what the Commission is now talking about, although Mr. Thompson hasn't provided statutory language; therefore he wasn't sure the exact rule change would be consistent with his proposal. **Ms. Hunter** affirmed and suggested that staff could do some additional work on the language with Mr. Thompson before the August meeting. She thought the best approach would be to focus on the ability to give the money back on a winning hand as opposed to his other idea which is make the on-duty employee eligible to win the entire PSJ.

**Gary Murrey**-Great American Gaming Corporation agreed with Commissioner Ellis that winning the jackpot was not necessarily the best approach. Operators also have concerns over a lot of employees having control of the funds while also being eligible to win them. He suggested the logical approach to the situation would be that once an employee wins a pot, to give them their \$2 back when they are not eligible to win. Regarding previous

comments made about employees being required to play, Mr. Murrey noted that occurs in very rare circumstances. Working employees are allowed to play and are encouraged to play because if there isn't a game going, they don't make any tips. He affirmed that statute allows the hiring of game starters; however, he didn't think it was a very common practice right now, and it is not a mandatory. Mr. Murrey also noted on-duty employees wagering their own money was not uncommon. He explained a betting, winning, and PSJ return of money example from Mr. Thompson's petition, noting the pot dollars, not the jackpot should be returned to the ineligible player when they win a pot.

**Director Day** advised the heart of this proposal is that it really does appear to be more of an employer/employee issue rather than a problem with the Commission's rule. The rule is straight forward and is designed in part to limit the exposure to collusion or cheating, and also to keep the public perception very clear that while the employee is there, they aren't participating in the jackpot. The process of stopping and giving some money out of the pot to one player as opposed to others opens the possibilities for questions and concerns at the table. Director Day affirmed that part of the reason that staff feels this is an employer/employee concern is reflected in Mr. Murray's testimony—in many cases employees will elect to play at a table that is slow, particularly if they are going to take over as the dealer—because it is in their interest to have players at the table to obviously tip more as the night goes on. Staff has heard that some card rooms do require, although it's been supplemented to say few actually require their employees to play—some select on their own and others are encouraged; however, they are not required to play. Director Day reiterated the rule is designed to preserve the integrity of the game and the public perception of that integrity, and he suggested caution as the petition is moved forward.

**Chair Ludwig** asked Mr. Murrey why the operators don't give the on-duty employee the money to play with. **Mr. Murrey** responded that he couldn't because it was against the rules to give the employee money to gamble.

**Representative Wood** asked if there was any way to get in front of this issue with signage—"here are the rules—if you see something that doesn't look kosher, here is why and here are the controls." **Mr. Murrey** affirmed WAC rules already require gaming rules and the rake amount for the PSJ to be posted at the game. All on-duty employees are required to have a nametag on their upper body to identify them as on-duty employees. Off-duty employees don't have to wear one. Mr. Murrey addressed the visual tracking that is available—noting that when there is a pot, the rake for the house is put off to the side, then the PSJ is put off to the side—it is taken out of the pot as the pot grows. When the pot is pushed to a player, those are then dropped afterwards under camera and in plain view. Mr. Murrey advised that in his long history of Poker, he didn't think Poker players would question the returning of funds because of the camaraderie at a Poker table. They know each other by name and they understand the plight of the dealer. He agreed the Commission has a different point of view on whose money is in that pot and what that pot represents. The Commission's view is that everybody contributes to the pot, while his personal view is the winning player who won the pot is the one contributing to the PSJ on that hand.

**Steve Michels**-Michels Development and owner of Chips Casinos, clarified that in order to have a pot there has to be two people contributing to the hand, and, if 100 percent (more or less) is given back to the player jackpot, that would actually be short changing the player who went up against that player, his contribution to that jackpot. If there are more than two players in that pot, he affirmed it would cause some confusion among Poker players because Poker players are very conscious of every dollar and where it is going. Mr. Michels addressed the recent \$1 to \$2 increase allowed for player supported jackpot and he noted that a lot of the Poker players left; however, when it was lowered back to \$1, they came back—the \$1 made a big difference to them, as would fifty cents, thirty-three cents, or a quarter, especially if the process is not clear. Mr. Michels addressed the employer/employee comments and he advised that the Commission was trying to create a rule that would affect everybody when in fact very few employers actually require their employees to sit at a table. He knew of only one place on the west side and he wasn't sure what the establishments in eastern Washington required their employees to do. Mr. Michels suggested that of the 95 or 96 card rooms he didn't know how many actually offered Poker; however, this rule change would cause a big headache for a lot of people, in contrast to the small few that the petitioner has a problem with.

**Chair Ludwig** asked Mr. Michels what he would think about a rule that simply said, an employee who is required to participate in a game involving a player supported jackpot may not win the player supported jackpot; but, may be reimbursed by the owner for the money that went into the rake to the pot, for the money that he supplied to the pot. **Mr. Michels** responded that it “would be really screwy” to figure out how that happens, and to figure out who is going to keep track of how much that person would get back. He agreed that with an on-duty employee dealer keeping track of that, there is the chance for collusion—there is the chance for him to get a winning hand. Chair Ludwig commented that licensees whole heartedly trust those same employees to handle a lot of money, and as an employee/employer relationship, he questioned why they wouldn't trust the employee to say how much they contributed to the jackpot. He believed the employee would tell management the amount and would be reimbursed, if there is a disagreement—it would be an employee/management problem—and the employee either quits or is fired. Mr. Michels responded that dealers generally are very nomadic, if they don't like working for one employer they often move to another employer because the grass is always greener somewhere else. He reiterated the proposed requirements will cause a big headache.

With no further comments, **Chair Ludwig** closed the public testimony, noting the rule would be on the docket next month for further discussion.

## **12. Petition – Billings for Electronic Bingo Card Daubers:**

**WAC 230-12-340 and WAC 230-20-244:**

**Ms. Hunter** advised that Game Tech manufactures bingo card daubers, which are electronic machines that allow players to play 66 bingo cards at once. Under the current rule, the fee for the daubers can only be based on the number of times that the dauber machine is used, or the number of bingo sessions. There cannot be a fee per each card purchased. Game Tech is asking this rule to be changed to allow them to have a per card fee for a limited number of games. She noted that the statute says that bingo proceeds

cannot inure the benefit of anyone other than the organization; however, it is not considered inurement if the expense is necessary. Ms. Hunter also noted there is a test in the rule that says an expense is necessary if it improves the overall profitability of the activity—by increasing the gross gambling receipts more than the corresponding increase in expenses. Based on the testimony given last month at the study session and at the meeting, staff had additional questions for the petitioner. Staff asked for an explanation on why this would be a necessary expense and what types of games they planned on using the pricing method for. Game Tech advised that there is a new game that they would like to have approved. Ms. Hunter noted that at this point staff recommends further discussion.

**Jeremy Schwenk**—Game Tech District Manager explained that Game Tech was trying to bring some new gaming content to the electronic daubers. The idea is to provide additional excitement to the player with the ultimate goal of increasing revenues for the charities and Game Tech. He affirmed concerns have been expressed about the per-card pricing being used across the board for the entire pricing structure of the electronic daubers, and he emphasized that was not Game Tech’s intent. He acknowledged that charities are watching their dollars and that a lot of them are struggling. He stated that Game Tech obviously would not want to do anything that would jeopardize their place in the market by charging more. One idea that has been tossed around is to insert language that would limit this pricing to extra games rather than having it be a blanket change to the rule. Mr. Schwenk expressed concern that it would slow the approval process down, thus slowing down the introduction of the new game into the market. With no further comments, **Chair Ludwig** called for public comments.

**Ronnie Strong**, Bingo Manager with AmVets in Tacoma, concurred Game Tech has a good concept; however they had concerns about the wording around the price per card. He asked the Commission to have Game Tech and Commission staff work together to find language for a subsection to this rule. If people want to do an “up-sell”—they would fall into the subsection and it would leave everything else the same. Mr. Strong affirmed he had a problem with the change because it may open a can of worms and a big expense.

**Commissioner Ellis** noted the letter the Commission received from Game Tech indicated that if Game Tech is allowed to charge for the daubers on a per card basis, the bingo halls could readily pass that cost on to its customers. **Mr. Strong** replied that he wasn’t aware of any charitable organization charging for use of the machine—he affirmed there were a couple of tribal agencies that do that if they don’t reach a certain amount of dollars on the machine, then someone pays for the lease on the machine. He didn’t see adding another charge as something that would be acceptable to the charitable organizations since they’re at the bottom of the food chain and they don’t have much room to charge back to the customers. Mr. Strong advised that AmVets currently pays the lease for their machine.

**Mr. Schwenk** suggested there might be a little confusion regarding passing the charge to the customer. He clarified Game Tech would charge per card and the bingo operators would charge the bingo customer for that card—identical to bingo paper. He was not suggesting operators would charge an additional fee to cover the cost of the card. With no

further comments, **Chair Ludwig** closed public testimony and advised this matter would be on the docket again next month for further discussion.

**13. Allowing Credit Between Manufacturers/Distributors:**

**WAC 230-12-340 and WAC 230-12-350:**

**Ms. Hunter** advised that Item 13 is a rule to repeal the credit restrictions between operators and distributors. She noted the credit rules between distributors and manufacturers were repealed last fall. At that time, the Commission asked staff to look at whether the rules preventing credit between operators and distributors could be repealed also. Staff has concluded the Commission wouldn't have regulatory concerns about allowing this sort of credit. Currently the operators must pay for products such as pull-tabs in cash—repealing the rules will allow operators to pay on credit. They would be able to follow business practices or they could also use credit cards.

The second rule staff is recommending be repealed deals with checks and how they have to be presented for payment. If credit between the operators is allowed, staff won't need to have all of the detailed requirements about checks and how they have to be accepted. Staff checked with other states as to whether they allow credit or not. New Mexico's regulations don't address this issue, Alaska allows 30 days to pay, and in Idaho and Oregon they are required to buy their pull-tabs from the state and there is an electronic fund transfer that occurs about three weeks after the product is received. **Ms. Hunter** advised that staff sent letters to all of the manufacturers and distributors letting them know about the rule proposal and haven't heard anything back. Staff recommends filing the rule for further discussion. **Chair Ludwig** called for public comments, there were none, and he noted the item would be scheduled for the July meeting.

**14. Petition – Logo Chips and Cards:**

**WAC 230-03-412:**

**Ms. Hunter** advised that Don Logerwell, an attorney who also happens to be a chip collector file this petition. She reported that currently, chips are considered to be equipment, and therefore they are something that the Gambling Commission controls. House-banked card rooms have to get chips that are made by a licensed manufacturer, and they have to have a unique logo. The rules are different for non-house-banked card rooms, depending on the licensed class. This issue relates to chips when they are removed from play. The petitioner wants to remove chips from the definition of gambling equipment when the business has closed or there has been a new logo put into place. He would like to make it easier for the chips to be sold to collectors. She noted that Mr. Logerwell's letters refer to a prior proposal by staff and he indicates that his language is what staff had proposed at one time. She affirmed that is true, it is an issue that staff has been discussing and debating on whether to deregulate this specific situation. **Ms. Hunter** affirmed that Mr. Logerwell has been very cooperative and very patient as staff has considered the pros and cons of no longer defining chips as gambling equipment once they have been discontinued or defaced. However, after weighing the pros and cons, staff feels the Commission should continue to include chips as gambling equipment and as a controlled activity.

**Ms. Hunter** advised that staff had several concerns regarding the potential for fraud or the ability to counterfeit the chips if they are not being controlled. If a business is closed and the chips are available, it may make it easier for them to be picked up and be available for counterfeiting. Staff is also concerned there may be unforeseen ramifications down the road. She reported that staff checked with Nevada and New Jersey and found that their regulations about chips are even more restrictive than in Washington. New Jersey required two card room employees to witness the chip destruction. In Nevada, the only method to destroy chips is by shredding them—they do not allow the chips to be buried, burned, or put in acrylic.

**Ms. Hunter** affirmed that staff is not concerned about the person who keeps an occasional chip as a souvenir. She drew attention to some of the letters in the agenda packet from chip collectors, noting they are against the petition. The Commission also received a letter from Chris Kealy who supports the proposal. A letter was received from ChipCo, a manufacturer of chips, explaining some of the security methods they have for chips. The Commission has three options; to file the rule, or deny the rule and state the reasons for that denial, or file an alternative rule. Staff recommends denial because staff believes the chips need to be controlled whether the business is sold or not. Additionally, staff has concerns regarding counterfeiting and fraud. Lastly, staff would like to remain consistent with other gambling states.

**Commissioner Ellis** asked why someone would counterfeit a chip from a casino or a card room that is closed. **Assistant Director Gary Drumheller** replied that if a casino (like Silver Dollar) has numerous casinos, they might have a slight difference in their chip color, the color-coding might be fairly close. A player could go into a different facility and offer it up without the dealer catching that the city name is the only difference. Mr. Drumheller also explained a person wouldn't necessarily have to wait for a place to close to get chips—if they know a place is closing, they might seek the opportunity to purchase those chips and then take them to another facility. The cost of them is zero but the return is a lot greater. **Commissioner Ellis** affirmed that wasn't really counterfeiting chips, but passing them off in the other facilities.

**Donald Logerwell** advised that he filed this petition after waiting for a year expecting that the language which the staff had written would be passed on to the Commission in August of 2005, then October of 2005, then January of 2006, then March of 2006. Finally, he was told the rule was bogged down with a lot of other rules and that if he wanted the rule to proceed, he would have to file a petition. Mr. Logerwell advised he filed the petition using the identical language that the staff itself had written in conjunction with input he provided through e-mails and telephone conferences. He was surprised when his petition was met with a recommendation from staff that it be summarily denied. Mr. Logerwell advised this is a serious issue that affects a number of people in the industry. He said that much of what staff has in the memo to the Commissioners recommending denial is overstated or in some instances flatly wrong. He advised that he was prepared to speak to those concerns, to talk about casino chips and how they are made and how different and unique they are. He suggested that the idea that a person can take a chip from one place to another and play it or cash it in is fanciful given the uniqueness and the difference in the way dealers and

cashiers are trained to be careful about what they take into the games and about what they take into the cage.

**Mr. Logerwell** emphasized that counterfeiting is another non-issue, as well as the idea of taking a chip from closed establishment A and somehow modifying it and selling back at establishment B. The reasons require some lengthy discussion, which he hoped would occur after the petition is filed and up for further discussion. He explained that there are numerous security devices that make counterfeiting by taking old chips and turning them into new chips impossible.

He touched briefly on the notion that Nevada and New Jersey have much more restrictive rules than Washington—stating that was simply and flatly wrong. **Mr. Logerwell** advised that New Jersey has no rules about what happens to chips when they are changed out or when a casino closes. There is no rule in New Jersey that says the chips have to be destroyed. Similarly the rule in Nevada is that the chips can be destroyed or that they can be disposed of in some other fashion as approved by the Chairman of the Commission. He advised that he is currently working with the Commission in Nevada to get permission to purchase a large quantity of chips from a very famous Nevada Casino that is scheduled to close in October, and that he has been through this process in other states (Missouri).

**Mr. Logerwell** addressed the letter from Mr. Kealy, and from ChipCo which basically says that ChipCo chips are absolutely secure and can't be counterfeited. From ChipCo's perspective, there is no reason for chips to stay under the regulatory control of the Commission. He advised that he had a new letter from Steve Michels also supporting the petition. Mr. Murrey also supports the petition, and he advised they would address the Commission if need be. Once the petition is filed for further discussion, Mr. Logerwell hoped that he could work with staff to figure out what their concerns are and to meet those concerns, and to point out some of the inaccuracies in their analysis and hopefully come up with a rule that works for everyone.

**Commissioner Bierbaum** addressed the letters from chip collectors that said their chip collection would be devalued, and she inquired how they acquired the chips. **Mr. Logerwell** said they get them in a variety of ways. He explained there are two categories of chips, live chips and chips that are no longer in active play. As chip collectors, they may visit an establishment and put some chips in their pockets—then let fellow collectors know. Chips can be swapped or purchased on E-bay. He advised that obsolete chips are sold on E-bay at a rate that exceeds any other rate on E-bay—more casino chips are sold on E-bay than any other single item. Mr. Logerwell noted that on one day there were roughly 6,000 on sale. He displayed a thick book which listed all of the obsolete casino chips available from the Nevada—some are very rare and very expensive. There are billions of casino chips on the market today that are obsolete. He advised that it was troublesome to hear the suggestion that the few chips that might go on sale from the State of Washington if this rule is approved would somehow create a significant security risk for anybody. The number of chips Washington has dwarfs in comparison to the number that comes from Nevada, New Jersey, or from the Gulf Coast.

**Director Day** explained that Commission staff works on various drafts of rules and petitions all the time, engaging in public discussion around items that people are interested in; however, that doesn't mean that staff ultimately decides to bring every rule forward to the Commission. The petitioner has described that this is staff's language, and in this case the staff decided not to move this language forward. Staff didn't believe it was the best regulatory step. One of the significant reasons staff struggled with this issue relates to the control of this equipment. When staff looked to the other larger jurisdictions, they appeared to have more stringent rules and that was a very important tie breaker in the discussions on which direction to go regarding this rule. Staff has no objection to the filing of the petition to allow staff to re-explore the requirements in some of the other states and to bring back that information to make sure that everyone is on the right page.

**Commissioner Bierbaum** made a motion seconded by **Commissioner Ellis** to accept the petition for filing for further discussion. **Chair Ludwig** called for public comments.

**Chris Kealy** Iron Horse Casino in Everett stated that in his opinion it was important to file the petition to see how it plays out.

With no further comments, **Chair Ludwig** advised that he was personally troubled by the motion. He addressed the thick list of letters in opposition to the rule noting that he was troubled by their reasons for the rule. *Vote taken; the motion passed with two aye votes, Commissioner Ludwig voted nay.*

#### **16. House-Banked Card Room – Financial Statements:**

**WAC 230-40-821 and WAC 230-40-823:**

**Mr. Trujillo** advised that Item 16(a) is a proposed amendment to WAC 230-40-821- Accounting Systems for House-Banked Card Rooms. Staff is proposing this rule change to make it clear that house-banked card room accounting systems must be maintained in accordance with generally accepted accounting principals (GAAP) and that the accounting system must include all income and expenses for the business entity, and that they must have these accounting systems in place prior to licensure. GAAP requirements are the industry standards for accounting. Currently, the rule does not require licensees to have their accounting system in place prior to licensure. That has proven to be a bit problematic in the application process when staff then goes out to approve the accounting systems post-licensure. The proposed change makes it easier for house-banked applicants and licensees to actually know what the requirements are prior to licensure. Currently the licensee and applicant must look in more than one rule to find what this one rule clearly states now. They have to go to WAC 230-40-821 to discover that their accounting system must be in accordance with GAAP. They have to go to another rule that says the financial statements submission, which is in WAC 230-40-823 requires the financial statements for the entire business entity. Staff is proposing to move those accounting system requirements into one rule to clarify the existing requirements. Staff recommends this rule be filed for further discussion. **Chair Ludwig** called for public comments and there were none.

**Commissioner Ellis** made a motion seconded by **Commissioner Bierbaum** to file WAC 230-40-821 for further discussion. *Vote taken; the motion passed unanimously.*



**Mr. Trujillo** advised that the proposed amendment to WAC 230-40-832-Financial Statements Required for House-Banked Card Rooms is also up for discussion and possible filing. Staff is proposing this rule change for several reasons. With the increased popularity of Poker, many of the house-banked licensees now offer Poker with their house-banked games. Because of how the rule is currently written, licensees have been confused about whether or not they need to report the gross receipts from Poker with their gross receipts from house-banked card games in determining what type of financial statement they must make. Staff believes the proposed language provides that clarification. Staff is also proposing this rule change so that licensees know exactly what documents they must submit. Lastly, the staff is proposing adding the definition of an independent CPA. **Mr. Trujillo** advised this rule change will help clarify and add consistency to the current rule. Staff also believes this change clarifies that Poker receipts were intended to be included in the calculation of gross receipts of a licensee operating a house-banked card room. Staff recommends filing for further discussion. **Chair Ludwig** called for public comments and there were none.

**Commissioner Ellis** made a motion seconded by **Commissioner Bierbaum** to file WAC 230-40-823 for further discussion. *Vote taken; the motion passed unanimously.*

#### **17. Rules Simplification Project:**

##### **Chapter 11 – Raffle Rules:**

**Ms. Hunter** advised Chapter 11 dealing with raffle rules is another portion of the rules simplification project. Chapter 11 is up for discussion and possible filing. There are no substantive changes to the rules, only to the style of the wording to make them easier to understand. Staff's hope with the whole project has been that if rules are easier to understand then perhaps they will be easier to follow and hopefully achieve better compliance. The package as proposed reduces a total of 1,500 words from this section, and it is now a separate raffle section. Previously, amusement games, Bingo, and the raffle rules were all in the same section. Staff recommends filing for further discussion.

**Commissioner Ellis** made a motion seconded by **Commissioner Bierbaum** to file Rules Simplification Rules Chapter 11 – Raffle Rules for further discussion. *Vote taken; the motion passed unanimously.*

#### **18. Other Business/General Discussion/Comments from the Public:**

**Chair Ludwig** called for comments. **Director Day** noted a time change for the July 13 study sessions; the Charitable Non-Profit study session will start at 9:30 a.m. for a half hour, and then at 10:00 a.m. the Commercial Operator session would commence with the intent to spend the remaining time available on card room simplification rules. The chapter is substantial and staff thought that it would be appropriate to have additional time for comments from licensees before asking the Commission to file the rules package.

**Chris Kealy** on behalf of the RGA, expressed their "thank you" to Mr. Ludwig for his ten-years of service—also noting that Mr. Ludwig has been an asset and leader and a personal mentor from Mr. Kealy. **Chair Ludwig** expressed his appreciation for the comments.

**Commissioner Ellis** advised that in his 18 month tenure with the Commission, it has been rewarding to have been able to observe the way in which Commissioner Ludwig has conducted himself. Commissioner Ludwig is truly a gentleman and a scholar, and that he will leave big shoes to fill. He stated it has been a wonderful opportunity to work together; and he appreciated it very much. **Chair Ludwig** advised that he appreciated having the support of and working with his fellow commissioners.

**Senator Prentice** commented that she didn't know if people realized how far she and Commissioner Ludwig go back—to when we were both House members. “Representative” Ludwig used to sit right behind “Representative” Prentice. Senator Prentice emphasized that it has been a wonderful experience knowing Commissioner Ludwig—particularly when they served in the Senate together—because she felt “this is someone I know, this is someone I trust, and this is somebody whose judgment is solid and who will give everybody a very fair hearing.” Senator Prentice affirmed that has been exactly the case, and she couldn't imagine who the Commission will find that has the same qualities. She wished Commissioner Ludwig “good luck” and agreed that it will be very hard to give him up. **Chair Ludwig** thanked Senator Prentice for her comments and he stressed that she was always a big help to the new legislators—making sure they were learning things right and even voting right.

**Jessica Hoefer** - Boys and Girls Club of Franklin, a non-profit Class III organization, addressed the ability for non-profits to utilize Poker as a fund raising opportunity. Ms. Hoefer advised that she would like to get feedback and perhaps submit a proposal about guidelines, rules, and regulations regarding what non-profits might be able to have in order to conduct Poker tournaments as a way to raise money for children and churches. **Director Day** noted that the staff actually intends to submit a rule proposal for filing next month to allow fund raising events to use Poker. He advised that Amy Hunter volunteered to be a direct contact person for Ms. Hoefer to work with.

**Linda Smith**—manager of the Seattle Jaycees Bingo commented on behalf of the organization and the bingo managers, thanking Chair Ludwig for all the years he has given to the Commission and to the non-profits. She also wished him good luck during his retirement.

**Director Day** commented that staff would also like to weigh in with the last word, noting that staff has considered it a privilege to work with Commissioner Ludwig and that staff wished him the best.

**Chair Ludwig** thanked everyone for their kind remarks. He responded that the Commission will have a good Chairman starting next month and that he has every confidence the Governor will pick a good replacement to serve on the Commission in his place, so things look bright. With no further comments, Chair Ludwig adjourned the meeting.

Minutes submitted by,  
Shirley Corbett, Executive Assistant